



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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Washington, D.C. 20005-3960

JAN 28 2015

Re: MUR 6394 (Rochelle M. Pingree, *et al.*)

Dear Messrs. Elias and Berkon:

Based on a complaint filed with the Federal Election Commission on October 13, 2010 and information supplied by your clients, the Commission, on June 28, 2011, found that there was reason to believe that Rochelle M. Pingree violated 52 U.S.C. § 30114(c)(2) (formerly 2 U.S.C. § 439a(c)(2)), and 11 C.F.R. §§ 100.93(c)(2) and 113.5(b), that Pingree for Congress and Anne Rand in her official capacity as treasurer violated 52 U.S.C. § 30114(c)(2) (formerly 2 U.S.C. § 439a(c)(2)) and 11 C.F.R. § 113.5(b), and that S. Donald Sussman violated 52 U.S.C. § 30116(a)(1)(A) (formerly 2 U.S.C. § 441a(a)(1)(A)), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

You may also request an oral hearing before the Commission. See Procedural Rules for Probable Cause Hearings, 72 Fed. Reg. 64919 (Nov. 19, 2007) and Amendment of Agency

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Procedures for Probable Cause Hearings, 74 Fed. Reg. 55443 (Oct. 28, 2009). Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address. The Commission will notify you within 30 days of your request for a hearing as to whether or not the request has been granted.

A finding of probable cause to believe requires that the Office of the General Counsel ~~attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.~~

Should you have any questions, please contact Kamau Philbert, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "LS" followed by a stylized flourish.

Lisa J. Stevenson  
Deputy General Counsel - Law

Enclosure  
Brief

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In the Matter of	)	
	)	
Rochelle M. Pingree	)	MUR 6394
Pingree for Congress	)	
Anne Rand in her official capacity as treasurer	)	
S. Donald Sussman	)	

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## 1.2

This matter was generated by a complaint filed with the Federal Election Commission by Charles M. Webster and the Maine Republican Party, alleging that Representative Rochelle M. Pingree, Pingree for Congress and Anne Rand in her official capacity as treasurer (the “Pingree Committee”), and S. Donald Sussman (collectively, “Respondents”) violated The Honest Leadership and Open Government Act of 2007 (“HLOGA”) and the Federal Election Campaign Act of 1971, as amended (the “Act”), when Pingree travelled on a private jet owned by Sussman, Pingree’s then-fiancé, to several campaign events in 2010.<sup>1</sup>

On June 28, 2011, the Commission found reason to believe that Pingree violated 52 U.S.C. § 30114(c)(2) (formerly 2 U.S.C. § 439a(c)(2)), and 11 C.F.R. §§ 100.93(c)(2) and 113.5(b) by traveling on a non-commercial aircraft in connection with an election for federal office, and that the Pingree Committee violated 52 U.S.C. § 30114(c)(2) (formerly 2 U.S.C. § 439a(c)(2)) and 11 C.F.R. § 113.5(b) by accepting Pingree's travel on a non-commercial aircraft.<sup>2</sup> The Commission also found reason to believe that Sussman violated 52 U.S.C.

1 On September 1, 2014, the Act was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

<sup>2</sup> Factual & Legal Analysis (Pingree) (“F&LA”); *see also* Certification ¶¶ 1-4, MUR 6394 (Rochelle M. Pingree, *et al.*) (Jun. 30, 2011). The Commission also took no further action regarding the Commission’s reason to believe finding that the Pingree Committee violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)). Certification ¶ 6, MUR 6394 (Rochelle M. Pingree, *et al.*) (Sept. 25, 2013).

1 § 30116(a)(1)(A) (formerly 2 U.S.C. § 441a(a)(1)(A)) by making an excessive in-kind  
2 contribution in the form of Pingree's travel expenses.<sup>3</sup> Based on the following factual and legal  
3 analysis, this Office is prepared to recommend that the Commission find probable cause to  
4 believe that Pingree violated 52 U.S.C. § 30114(c)(2) (formerly 2 U.S.C. § 439a(c)(2)) and  
5 11 C.F.R. §§ 100.93(c)(2) and 113.5(b), that the Pingree Committee violated 52 U.S.C.  
6 § 30114(c)(2) (formerly 2 U.S.C. § 439a(c)(2)) and 11 C.F.R. § 113.5(b), and that Sussman  
7 violated 52 U.S.C. § 30116(a)(1)(A)) (formerly 2 U.S.C. § 441a(a)(1)(A)).

8 **II. ANALYSIS**

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10 **A. Statement of Facts**

11 In 2010, Sussman owned and operated a 19-passenger 2007 Dassault Falcon 2000 EX  
12 Easy luxury turbojet business aircraft through a limited liability company that he solely owned.<sup>4</sup>  
13 The hourly cost of a flight on the jet is approximately \$4,984.<sup>5</sup> The \$4,984 hourly costs includes  
14 a \$1,975 leasing fee, \$454 hourly fixed costs, \$2,225 in marginal costs associated with each use,  
15 and \$330 hourly staffing costs.<sup>6</sup> Sussman pays for all of the costs associated with the jet.<sup>7</sup>  
16 Sussman contributed the maximum \$4,800 (\$2,400 x 2) election cycle contribution to Pingree's  
17 2010 campaign on January 26, 2009.<sup>8</sup>

<sup>3</sup> F&LA (Sussman); *see also* Certification ¶ 5, MUR 6394 (Rochelle M. Pingree, *et al.*) (Jun. 30, 2011). The Commission also took no further action regarding the Commission's reason to believe finding that Sussman violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)) and 11 C.F.R. § 114.2(e). Certification ¶ 5, MUR 6394 (Rochelle M. Pingree, *et al.*) (Sept. 25, 2013).

<sup>4</sup> RTB Resp. at 1, n.1 (Aug. 12, 2011); Supp. RTB Resp. at 1, Attach. 1 (Nov. 4, 2011).

<sup>5</sup> Supp. RTB Resp. at 3 (Dec. 16, 2011); Supp. RTB Resp. at 3-4 (Nov. 23, 2011); Supp. RTB Resp. at 1, Attach. 2 (Nov. 14, 2011) ("Wilson Aff.").

<sup>6</sup> *Id.*; Supp. RTB Resp. at 1, Attach. 1 (Nov. 4, 2011).

<sup>7</sup> Wilson Aff. ¶ 7; RTB Resp. at 1, n.1 (Aug. 12, 2011).

<sup>8</sup> *See* FEC Form 3, April 15 Quarterly Report of Receipts and Disbursements at 9, 10 (Apr. 15, 2009).

1 In the summer of 2010, Pingree and the Committee began planning a re-election  
2 fundraiser in New York City.<sup>9</sup> Pingree, who routinely accompanied Sussman on the jet,  
3 conferred with Sussman to identify a date that would enable them to also spend the day together  
4 while she was in New York for her campaign event.<sup>10</sup> Sometime around August 13, 2010, the  
5 Pingree Committee's Finance Director confirmed that the fundraiser was scheduled for Monday,  
6 September 13, 2010, at a private residence on Manhattan's East Side in New York City from  
7 6:30 p.m. to 8:00 p.m.<sup>11</sup>

8 On September 13, 2010, the day of the fundraiser, Pingree traveled with Sussman on the  
9 jet from Portland, Maine to Westchester County Airport in White Plains, New York ("White  
10 Plains Airport").<sup>12</sup> After arriving at White Plains Airport at 1:20 p.m., Pingree and Sussman  
11 drove to Sussman's home and office in Greenwich, Connecticut where Sussman worked at his  
12 office and Pingree waited at Sussman's home.<sup>13</sup> They later drove to Sussman's apartment in  
13 Manhattan, New York City, where they met with Sussman's client.<sup>14</sup> After about 15 to 30  
14 minutes, Pingree left the meeting to go across town to the Upper East Side private residence  
15 where the fundraiser would be held.<sup>15</sup> Pingree met her son and grandson, who live in New York  
16 City, at the private residence.<sup>16</sup> Later that evening, Pingree and Sussman attended the 6:30 p.m.

<sup>9</sup> Supp. RTB Resp. at 2 (Dec. 16, 2011).

<sup>10</sup> *Id.*

<sup>11</sup> Supp. RTB Resp. at 1, Attach. 3 (Nov. 14, 2011).

<sup>12</sup> Supp. RTB Resp. at 2 (Dec. 16, 2011); Pingree Decl.

<sup>13</sup> Supp. RTB Resp. at 2 (Dec. 16, 2011).

<sup>14</sup> *Id.*; Pingree Decl.

<sup>15</sup> Supp. RTB Resp. at 3 (Dec. 16, 2011); Pingree Decl.

<sup>16</sup> *Id.*

1 fundraiser.<sup>17</sup> No Committee staff assertedly attended the fundraiser.<sup>18</sup> After the fundraiser  
2 ended, Pingree and Sussman drove back to White Plains Airport, and at 9:22 p.m. flew on the jet  
3 to Washington, D.C.<sup>19</sup> The September 13, 2010, flight lasted a total of 1.6 hours (.8 hour each  
4 flight), for a total cost of \$7,974.40 ( $\$4,984 \times 1.6 = \$7,974.40$ ).<sup>20</sup>

5 Pingree took at least one additional campaign-related trip on the jet that spanned from  
6 September 30, 2010, to October 4, 2010.<sup>21</sup> Pingree flew from Washington D.C. just before 7:00  
7 p.m. on September 30, 2010, and arrived in Portland, Maine, just after 8 p.m.<sup>22</sup> The next day,  
8 October 1, 2010, Pingree attended a campaign fundraiser that was scheduled from 5:30 p.m. to  
9 7:00 p.m.<sup>23</sup> Afterwards, Pingree attended a Democratic candidates' event in  
10 Kennebunk/Kennebunkport that was scheduled from 7:00 p.m. to 8:00 p.m.<sup>24</sup> The following  
11 day, October 2, 2010, Pingree attended a Seacoast Democrats event that was scheduled from  
12 3:00 to 4:00 p.m. and a campaign house party that was scheduled from 4:30 p.m. to 6:30 p.m.<sup>25</sup>  
13 On October 4, 2010, Pingree flew on the jet from Portland, Maine to Westchester, New York for

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<sup>17</sup> Pingree Decl.

<sup>18</sup> Supp. RTB Resp. at 3 (Nov. 23, 2011).

<sup>19</sup> Supp. RTB Resp. at 3 (Dec. 16, 2011); Pingree Decl.

<sup>20</sup> See Wilson Aff. at 8; Supp. RTB Resp. at 6, App. B ¶ 9 (Dec. 3, 2012). The \$7,974.40 does not include standard repositioning costs to return the jet from Washington, D.C. to its base at the White Plains Airport in this case because Sussman, the owner of the jet, used it for his own purposes after leaving Pingree in Washington, D.C. and before the aircraft was repositioned.

<sup>21</sup> Supp. RTB Resp. at 6 (Dec. 3, 2012).

<sup>22</sup> *Id.* at 7.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

1 'a nonprofit fundraiser — the only scheduled event on Pingree's calendar for the day.<sup>26</sup> It is  
2 uncertain whether Pingree flew back to Washington, D.C. on the jet after the Westchester, New  
3 York fundraiser.<sup>27</sup> This trip, which involved the same destinations (in a different order) as the  
4 September 13, 2010, trip, also cost of \$7,974.40.<sup>28</sup>

5 **B. There Is Probable Cause to Believe that Pingree Was a Campaign Traveler**  
6 ~~**When She Travelled on Sussman's Private Jet to Campaign Events in 2010**~~

7  
8 HLOGA amended the Act to prohibit House candidates from making expenditures for  
9 non-commercial aircraft travel.<sup>29</sup> The Commission promulgated implementing regulations that  
10 became effective January 6, 2010.<sup>30</sup> Commission regulations provide that House candidates are  
11 prohibited from engaging in non-commercial air travel while campaigning and from accepting  
12 in-kind contributions in the form of non-commercial air travel.<sup>31</sup> The prohibition applies to a  
13 House candidate who is a "campaign traveler," which includes, "any candidate traveling in  
14 connection with an election for Federal office."<sup>32</sup>

15 Despite the general prohibition on such travel, HLOGA permits a House candidate to  
16 travel on an aircraft owned or leased by the candidate or the candidate's "immediate family

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *See* Wilson Aff. at 8; Supp. RTB Resp. at 6, App. B ¶ 9 (Dec. 3, 2012).

<sup>29</sup> 52 U.S.C. § 30114a(c)(2) (formerly 2 U.S.C. § 439a(c)(2)).

<sup>30</sup> *See* Explanation and Justification, 74 Fed. Reg. 63,951 (Dec. 7, 2009).

<sup>31</sup> 11 C.F.R. §§ 100.93(c)(2), 113.5(b).

<sup>32</sup> *Id.* § 100.93(a)(3)(i)(A).

1 member.”<sup>33</sup> HLOGA defines immediate family members as a father, mother, son, daughter,  
2 brother, sister, husband, wife, father-in-law, or mother-in-law, but does not include “fiancé.”<sup>34</sup>

3 Pingree was a campaign traveler as defined by 11 C.F.R. § 100.93(a)(3)(i)(A): she flew  
4 on a non-commercial aircraft from Portland, Maine to her 2010 re-election campaign fundraiser  
5 in New York City on September 13, 2010, and then returned to Washington, D.C. on the same  
6 non-commercial aircraft. Pingree also flew on the same aircraft from Washington, D.C. to  
7 Maine on September 30, 2010, where she attended a campaign fundraiser and a Democratic  
8 candidates’ event in Maine the next day, October 1, 2010. Pingree then further attended a  
9 Seacoast Democrats event and a campaign house party the following day, October 2, 2010. On  
10 October 4, 2010, two days after these campaign events, Pingree flew on the jet from Portland,  
11 Maine to Westchester, New York for a nonprofit fundraiser. Thus, Pingree was a campaign  
12 traveler and violated the Act when she travelled on her fiancé’s non-commercial aircraft in the  
13 course of her campaign activities.<sup>35</sup>

14 Respondents do not dispute that Pingree travelled on a non-commercial aircraft and  
15 attended several 2010 re-election campaign fundraisers and other campaign events during her  
16 trips. Supp. RTB Resp. at 2 (Dec. 3, 2012). Rather, Respondents dispute that the flights  
17 constitute a prohibited expenditure under HLOGA, and thus contend that Pingree was not a  
18 “campaign traveler” under the Commission’s regulations. Supp. RTB Resp. at 2, 7-8 (Dec. 3,  
19 2012). Respondents maintain that Pingree would have travelled on the jet to the relevant  
20 destinations — Washington, D.C., Maine, and New York — for personal reasons irrespective of

<sup>33</sup> 52 U.S.C. § 30114(c)(3) (formerly 2 U.S.C. § 439a(c)(3)).

<sup>34</sup> *Id.* § 30114(c)(3)(B) (formerly 2 U.S.C. § 439a(c)(3)(B)); 11 C.F.R. §§ 100.93(g)(4), 113.5(c)(3).

<sup>35</sup> *See* 52 U.S.C. § 30114(c)(2) (formerly 2 U.S.C. § 439a(c)(2)); 11 C.F.R. §§ 100.93(c)(2), 113.5(b).



1 her candidacy or the campaign events. Therefore, Respondents argue that Pingree's use of the  
2 jet does not constitute an in-kind contribution or expenditure, citing Advisory Op. 2002-5  
3 (Hutchinson). Supp. RTB Resp. at 8 (Dec. 3, 2012); RTB Resp. at 7-10 (Aug. 12, 2011).

4 The Commission rejected this argument at the reason to believe stage, recognizing that  
5 Advisory Op. 2002-5, which pre-dates HLOGA and the Commission's implementing  
6 regulations, is inapplicable to this situation. Factual & Legal Analysis (Pingree) at 7 ("F&LA");  
7 F&LA (Magic Carpet) at 7. HLOGA prohibits the use of non-commercial flights by House  
8 candidates engaged in campaign travel. *Id.* Both HLOGA and the Commission regulations  
9 create a bright-line test for any travel in connection with the candidate's election. F&LA  
10 (Pingree) at 7-8; F&LA (Magic Carpet) at 7. The HLOGA restrictions on a "campaign traveler"  
11 are not altered or negated by a House candidate including some amount of non-campaign activity  
12 on a trip involving scheduled campaign activity.<sup>36</sup> F&LA (Pingree) at 8; F&LA (Magic Carpet)  
13 at 7. Because Representative Pingree went to a campaign fundraiser while on the trip to New  
14 York City, she is a covered campaign traveler who may not travel on a non-commercial aircraft.  
15 *Id.* Respondents have not presented additional information or argument that suggests the  
16 Commission's conclusions were misplaced or should be reconsidered.

17 After the Commission's RTB findings, Respondents also raised one new argument,  
18 contending that the costs of Pingree's trips are not reportable as an expenditure under 11 C.F.R.  
19 § 106.3(d) because the trips involved roundtrip flights from Washington, D.C. to Pingree's home  
20 state of Maine, with a stopover in New York. RTB Resp. at 10-12 (Aug. 12, 2011); Supp. RTB  
21 Resp. at 7-8 (Dec. 3, 2012). Respondents cite MUR 1729 (Young), which pre-dates both

<sup>36</sup> Respondents' arguments about the "primary purpose" of the trip might be relevant to determining whether Sussman could pay for Pingree's commercial airfare on a trip with him that would have occurred irrespective of her candidacy, but are irrelevant to determining whether Pingree could use prohibited non-commercial flights in connection with her re-election campaign. F&LA (Pingree) at 8; F&LA (Magic Carpet) at 7.

1 HLOGA and the Commission's corresponding regulations. Respondents' argument is meritless  
2 because both HLOGA and the Commission's implementing regulations expressly override any  
3 prior inconsistent provision of the Act or Commission's regulations. *See* 2 U.S.C. § 439a(c)(2);  
4 11 C.F.R. § 113.5(b) (HLOGA noncommercial House travel prohibition applies  
5 "notwithstanding any other provision"). Additionally, MUR 1729 is inapposite because it  
6 involved official governmental travel on a U.S. Coast Guard aircraft and stopovers within the  
7 candidate's home state. *See* MUR 1729 (Young) Certification (Jan. 15, 1985) (Alaska  
8 congressional candidate did not have to report the cost of travel from Washington, D.C. to  
9 Juneau where he attended a campaign event during a congressional fact-finding trip).

10 **C. There Is Probable Cause to Believe that Sussman Made, and the Pingree**  
11 **Committee Accepted, an Unlawful In-Kind Contribution as a Result of**  
12 **Pingree's Travel on a Non-commercial Aircraft to Campaign Events in 2010**

13 The Act prohibits any candidate or political committee from accepting any contribution  
14 that exceeds certain contribution limits.<sup>37</sup> "Contribution" includes any gift, subscription, loan,  
15 advance, or deposit of money or anything of value made by any person for the purpose of  
16 influencing any election for federal office.<sup>38</sup> During the 2010 election cycle, the Act prohibited  
17 any person from making contributions to any candidate or the candidate's authorized committee  
18 with respect to a federal election that in the aggregate exceeded \$2,400.<sup>39</sup> A contribution by a  
19 limited liability company that is owned by a sole individual and does not elect to be treated as a  
20 corporation by the Internal Revenue Service is attributed only to the individual.<sup>40</sup>

<sup>37</sup> 52 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)).

<sup>38</sup> *Id.* § 30101(8) (formerly 2 U.S.C. § 431(8)).

<sup>39</sup> *Id.* § 30116(a)(1)(A) (formerly 2 U.S.C. § 441a(a)(1)(A)).

<sup>40</sup> *See* 11 C.F.R. § 110.1(g)(4).

1 The Pingree Committee violated the Act by accepting the costs of Pingree's non-  
2 commercial travel.<sup>41</sup> Pingree and the Pingree Committee further violated the Act by accepting  
3 an excessive in-kind contribution because Sussman had already contributed the maximum \$2,400  
4 individual contributions to the Pingree Committee for the 2010 primary and general elections.<sup>42</sup>  
5 Sussman also violated the Act by making an excessive in-kind contribution when he paid for  
6 Pingree's non-commercial travel.<sup>43</sup>

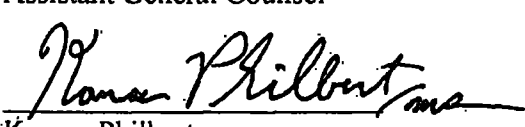
7 **III. CONCLUSION**

8 Based on the foregoing, the Office of General Counsel is prepared to recommend that  
9 there is probable cause to believe Pingree violated 52 U.S.C. § 30114(c)(2) (formerly 2 U.S.C.  
10 § 439a(c)(2)) and 11 C.F.R. §§ 100.93(c)(2) and 113.5(b), that the Pingree Committee violated  
11 52 U.S.C. § 30114(c)(2) (formerly 2 U.S.C. § 439a(c)(2)) and 11 C.F.R. § 113.5(b), and that  
12 Sussman violated 52 U.S.C. § 30116(a)(1)(A)) (formerly 2 U.S.C. § 441a(a)(1)(A)).

13  
14  
15 1/26/15  
16 Date

  
Daniel A. Petalas  
Associate General Counsel for Enforcement

  
Mark Shonkwiler  
Assistant General Counsel

  
Kamau Philbert  
Attorney

<sup>41</sup> See 52 U.S.C. § 30114(c)(2) (formerly 2 U.S.C. § 439a(c)(2)); 11 C.F.R. § 113.5(b).

<sup>42</sup> See *id.* § 30116(f) (formerly 2 U.S.C. § 441a(f)).

<sup>43</sup> See *id.* § 30116(a)(1)(A) (formerly 2 U.S.C. § 441a(a)(1)(A)).